

Section 500.335(k) of the Motor Fuel Tax regulations provides that “[f]iling a power of attorney does not relieve the licensee of the legal obligations associated with the license. The licensee is responsible for the payment of taxes as well as all acts and omissions of the reporting service. See 86 Ill. Adm. Code 500.335. (This is a GIL).

December 20, 2001

Dear Xxxxx:

This letter is in response to your letter dated November 16, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

This letter is in follow up to a telephone conversation of today's date with PERSON of this office. As PERSON explained to you, this office represents an Illinois company that has several subsidiary Limited Liability Companies that hold licenses as interstate carriers. The parent company is not an interstate carrier. The parent company is the sole owner of the Limited Liability Companies. The Limited Liability Companies are the carriers, hold the licenses from the Federal Motor Carrier Safety Administration, and either own or lease trucks for their interstate operations. So that there is no misunderstanding, the parent company does not own or lease any equipment to the wholly-owned subsidiary Limited Liability Companies. Likewise, the wholly-owned subsidiary Limited Liability Companies do not lease equipment to the parent company.

We have several questions.

1. Can the parent company obtain the IFTA License and decals, file reports, and pay taxes on behalf of its various wholly-owned subsidiary Limited Liability Companies?
2. If the parent company can, in fact, obtain the license and purchase the decals, report and pay the taxes, must there be some written agreement between the parent and the subsidiaries?
3. Is there some authority in either the statute, the regulations, or the carrier compliance manual that would authorize the above?

I thank you for considering this issue. If you need additional facts prior to issuing an opinion do not hesitate to call upon us. We would very much appreciate a reply by fax to this office.

As you are aware, the Motor Fuel Tax Law, 35 ILCS 505/1 et seq., imposes a tax upon the use of motor fuel upon highways of this State by commercial motor vehicles. Every commercial motor carrier must pay the tax imposed by Section 13a of the Motor Fuel Tax Law, calculated on the amount of motor fuel consumed on any highway in this State. Section 13a.4 of the Motor Fuel Tax Law provides that, except as provided in Section 13a.5 of the Motor Fuel Tax Law, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction. Section 13a.5 provides for single trip permits.

The Department's regulations at 86 Ill. Adm. Code 500.325 provide that a lessor regularly engaged in the business of leasing or renting motor vehicles without drivers for compensation to licensees or other lessees may be deemed to be the licensee, and such lessor may be issued a license if an application has been properly filed and approved by the base jurisdiction. This regulation also describes procedures for carriers using independent contractors under leases, and household goods carriers using independent contractors, agents, or service representatives under intermittent leases. However, based upon your representation that the parent company does not lease any equipment to its subsidiaries, and the subsidiaries do not lease equipment to the parent company, we do not believe these provisions would apply.

If the parent company wishes to handle its subsidiaries' applications for license and decals, it may do so under a properly executed power of attorney. See Section 500.305(a)(7) of the Department's regulations. It may also file returns on their behalf. See Section 500.335(k). However, Section 500.335(k) provides that "[f]iling a power of attorney does not relieve the licensee of the legal obligations associated with the license. The licensee is responsible for the payment of taxes as well as all acts and omissions of the reporting service. If a power of attorney is on file, the Illinois Department of Revenue will mail the quarterly tax return to the reporting service. Decal and renewal applications, however, will always be mailed directly to the licensee."

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk
Enc.